

# UNITED STATES DISTRICT COURT

## DISTRICT OF ARIZONA

UNITED STATES OF AMERICA

v.

**ORDER OF DETENTION PENDING TRIAL**Charles Frank FullerCase Number: 11-08010M-001

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), a detention hearing has been held. I conclude that the following facts are established: *(Check one or both, as applicable.)*

- ☒ by clear and convincing evidence the defendant is a danger to the community and require the detention of the defendant pending trial in this case.
- ☐ by a preponderance of the evidence the defendant is a serious flight risk and require the detention of the defendant pending trial in this case.

**PART I -- FINDINGS OF FACT**

- ☐ (1) The defendant has been convicted of a (federal offense)(state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. § 3156(a)(4).
  - ☐ an offense for which the maximum sentence is life imprisonment or death.
  - ☐ an offense for which a maximum term of imprisonment of ten years or more is prescribed in \_\_\_\_\_<sup>1</sup>
  - ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. § 3142(f)(1)(A)-(C), or comparable state or local offenses.
- ☐ (2) The offense described in finding 1 was committed while the defendant was on release pending trial for a federal, state or local offense.
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction)(release of the defendant from imprisonment) for the offense described in finding 1.
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an)other person(s) and the community. I further find that the defendant has not rebutted this presumption.

**Alternative Findings**

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more is prescribed in \_\_\_\_\_<sup>2</sup>
  - ☐ under 18 U.S.C. § 924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

**Alternative Findings**

- ☐ (1) There is a serious risk that the defendant will flee; no condition or combination of conditions will reasonably assure the appearance of the defendant as required.
- ☐ (2) No condition or combination of conditions will reasonably assure the safety of others and the community.
- ☐ (3) There is a serious risk that the defendant will (obstruct or attempt to obstruct justice) (threaten, injure, or intimidate a prospective witness or juror).
- ☐ (4) \_\_\_\_\_

<sup>1</sup>Insert as applicable: (a) Controlled Substances Act (21 U.S.C. § 801 et seq.); (b) Controlled Substances Import and Export Act (21 U.S.C. § 951 et seq.); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. § 955a).

<sup>2</sup>Insert as applicable: (a) Controlled Substances Act (21 U.S.C. § 801 et seq.); (b) Controlled Substances Import and Export Act (21 U.S.C. § 951 et seq.); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. § 955a).

**PART II -- WRITTEN STATEMENT OF REASONS FOR DETENTION**

(Check one or both, as applicable.)

- ☐ (1) I find that the credible testimony and information<sup>3</sup> submitted at the hearing establishes by clear and convincing evidence as to danger that:  
The defendant has been indicted for providing four firearms to a twice convicted drug felon. Based upon wire-taps, observations by government agents, informant information, evidence seized at the defendant's home pursuant to a search warrant, and information provided by a witness, the defendant purchased firearms, both in his name, and using the assistance of another (Herrera), which were delivered to San Diego, California to a co-conspirator, a twice convicted drug felon. The defendant was overheard telling his co-conspirator that he could provide him with semi-automatic weapons which he would convert to fully automatic. A receipt for a silencer purchased in Yuma, Arizona was found at the defendant's residence. The silencer itself was found in the possession of the co-conspirator in San Diego. A search of the defendant's home resulted in the discovery of firearms. The defendant drove a person named Herrera to two stores where Herrera purchased firearms in his name. Those firearms were delivered to the co-conspirator in San Diego by the defendant. Wire tap conversations revealed that the defendant asked his co-conspirator to plant drugs in his ex-wife's car so that she would be arrested at the border and so that he could obtain custody of his daughter. The defendant advised pretrial services that his wife resides in Tecate, Baja California, Mexico. The defendant was charged in an unrelated matter for Aggravated Assault and other charges. Although the charges were dismissed, the victim in that matter told authorities that the defendant asked the victim to murder his wife so that the defendant would not have to pay child support. While the statements relating to the solicitation of murder were not independently verified, other information provided by the victim matched information obtained during the course of the investigation. The pretrial services report verified that the defendant was divorced and paying child support including payment on a child support arrearage.
- ☐ (2) I find that a preponderance of the evidence as to risk of flight that:
- ☐ The defendant has no significant contacts in the District of Arizona.
  - ☐ The defendant has no resources in the United States from which he/she might make a bond reasonably calculated to assure his/her future appearance.
  - ☐ The defendant has a prior criminal history.
  - ☐ There is a record of prior failure to appear in court as ordered.
  - ☐ The defendant attempted to evade law enforcement contact by fleeing from law enforcement.
  - ☐ The defendant is facing a minimum mandatory of \_\_\_\_\_ incarceration and a maximum of \_\_\_\_\_.
- ☐ The defendant does not dispute the information contained in the Pretrial Services Report, except: \_\_\_\_\_
- ☐ In addition: \_\_\_\_\_

The Court incorporates by reference the findings of the Pretrial Services Agency which were reviewed by the Court at the time of the hearing in this matter.

<sup>3</sup> "The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the [detention] hearing." 18 U.S.C. § 3142(f). See 18 U.S.C. § 3142(g) for the factors to be taken into account.

**PART III -- DIRECTIONS REGARDING DETENTION**

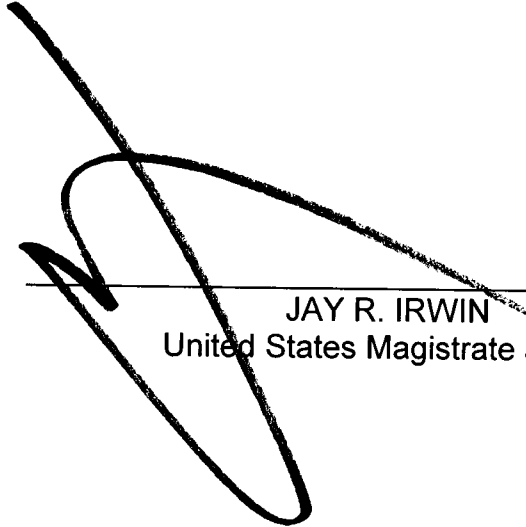
The defendant is committed to the custody of the Attorney General or his/her designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

**PART IV -- APPEALS AND THIRD PARTY RELEASE**

IT IS ORDERED that should an appeal of this detention order be filed with the District Court, it is counsel's responsibility to deliver a copy of the motion for review/reconsideration to Pretrial Services at least one day prior to the hearing set before the District Court.

IT IS FURTHER ORDERED that if a release to a third party is to be considered, it is counsel's responsibility to notify Pretrial Services sufficiently in advance of the hearing before the District Court to allow Pretrial Services an opportunity to interview and investigate the potential third party custodian.

DATE: April 26, 2011



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JAY R. IRWIN  
United States Magistrate Judge